

Summary: The Defendant was charged in a one-count indictment with conspiracy to possess with intent to distribute and distribute a controlled substance. At the time of the arrest, state law enforcement authorities seized drugs, a handgun, and cash from the Defendant's vehicle. A civil forfeiture action is pending in Morton County District Court as to the seized items. The Defendant argued that the federal district court should resolve the forfeiture issues even though the indictment does not contain a forfeiture allegation and the federal government does not seek criminal forfeiture of the items seized. The Court found that Rule 32.2(a) of the Federal Rules of Criminal Procedure expressly prohibits this Court from ordering forfeiture as part of a criminal judgment in this action.

Case Name: USA v. Carl Jackson Rumble

Case Number: 1-09-cr-67

Docket Number: 63

Date Filed: 4/1/10

Nature of Suit:

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

United States of America,)	
)	
Plaintiff,)	ORDER ON FORFEITURE
)	
v.)	
)	
Carl Jackson Rumble,)	Case No. 1:09-cr-067
)	
Defendant.)	

The indictment in this drug conspiracy case was returned on August 19, 2009. See Docket No. 1. There is no forfeiture allegation contained in the indictment. The defendant, Carl Jackson Rumble, was arrested in Mandan, North Dakota, on August 21, 2009. At the time of the arrest, law enforcement officers located approximately .39 grams of methamphetamine (in four separate baggies), a loaded handgun and \$2,350 in cash, all contained within a duffle bag in Rumble's pickup. Both state and federal authorities were involved in the arrest.

State law enforcement officials seized the above-described property. A civil forfeiture action was filed on November 12, 2009, by the State of North Dakota in Morton County District Court, alleging forfeiture of “2004 Nissan Frontier automobile” and “\$2,350 United States currency,” See Docket No. 60-1. Rumple filed a motion to dismiss the civil action in state court contending that the forfeiture “should be dealt with as part of the federal court action.” The state court ordered that the civil action be held in abeyance pending a resolution of the criminal case in federal court. See Docket No. 60-2. Rumple contends this Court should resolve the forfeiture issues as to the property which is currently the subject of a pending state court action in Morton County.

Rule 32.2(a) of the Federal Rules of Criminal Procedure unequivocally provides that a district court cannot enter a judgment unless the indictment or information contains a notice of forfeiture. Specifically, Rule 32.2(a), in part, provides:

A court must not enter a judgment of forfeiture in a criminal proceeding unless the indictment or information contains notice to the defendant that the government will seek the forfeiture of property as part of any sentence in accordance with the applicable statute.

The Federal Rules of Criminal Procedure have the force and effect of law and must be obeyed. United States v. Whitted, 454 F.2d 642, 644 (8th Cir. 1972); United States v. Marion, 562 F.3d 1330, 1338-39 (11th Cir. 2009). At least one court has recognized that “the property for which the government seeks criminal forfeiture must be stated in the indictment.” United States v. Parrett, 530 F.3d 422, 426 n.3 (6th Cir. 2008). Thus, it is clear this Court may not enter a judgment of forfeiture if the underlying indictment in federal court does not contain a forfeiture allegation. Counsel for Rumple argues that the federal court is mandated to assert criminal forfeiture jurisdiction over

property which is the subject of a state court civil action even though a criminal forfeiture has neither been alleged in the indictment nor sought by the federal government. The Court disagrees.¹

Criminal forfeiture addresses only the ownership interest of the defendant and may require another separate ancillary proceeding regarding the interest of any third party claimants. See Fed. R. Crim. P. 32.2(c). Since the defendant contests the forfeiture of the cash and automobile, and since it appears there may be third party claimants, it is more efficient to handle the forfeiture in one civil proceeding which was previously filed in Morton County and remains pending in that state court. The indictment must contain a notice of forfeiture before any federal district court can include an order of forfeiture in a criminal judgment. Neither 18 U.S.C. §. 3554 nor any other statute, rule, or regulation provides otherwise. Rule 32.2(a) of the Federal Rules of Criminal Procedure prohibits this court from ordering forfeiture as part of the criminal judgment. The subject of forfeiture will not be addressed at the sentencing hearing on June 7, 2010, and that subject is best left for the state court to resolve in the pending state court action in Morton County.

IT IS SO ORDERED.

Dated this 1st day of April, 2010.

/s/ Daniel L. Hovland

Daniel L. Hovland, District Judge
United States District Court

¹ Rumple relies on 18 U.S.C. § 3554 which provides that the court, in imposing a sentence in a drug conspiracy case such as this, should order “that the defendant forfeit property to the United States.” However, Rule 32.2(a) of the Federal Rules of Criminal Procedure expressly states that a court may not order forfeiture unless the indictment or information has put the defendant on notice that the government will seek the forfeiture of property. The government never sought forfeiture in this case and the indictment is silent on the subject of the forfeiture.